Sustainable Development and Protection of Environment in India: Judicial Perspective

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I. Introduction:

In a modern welfare state, justice has to address social realities and meet the demands of the time. Environmental Protection gives rise to a host of problems for a developing nation like ours. Harmonization of environmental values by administrative and legislative strategies with developmental values is a must. It is to be formulated in the light of prevalent socio-economic conditions in the country. The shortcomings of the executive in coping with the pressures on the environment brought about by change in the country's economic policies had thrust the responsibility of environmental protection upon the judiciary[2].

The courts have a vital role to play in determining the scope of the powers and functions of administrative agencies and in striking a balance between the environment and development. Principle 10 of the Rio Declaration of 1992 specifically provides for effective access to judicial and administrative proceedings, including redress and remedy[3].

In India right to clean environment has emerged as a basic human right. The Indian Constitution contains provisions guaranteeing the right to equality, right to life and the right to Constitutional remedies. The judicial wing of the country, more particularly, the Supreme Court has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The Supreme Court of Indian has been pragmatic in its approach and has put in essential environmental doctrines on a firm footing. Some of them have broken new grounds giving new dimensions to the Indian environmental law. The role of Supreme Court as final interpreter is increasingly reflected in various judgments. It has aptly been observed that the protection of environment and conservation of natural resources is essential for the benefit of humanity and future generations and it cannot be ignored or denied in the garb of economic growth, as

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[2] Dr. G. Indira Priya Darsini & Prof K. Uma Devi, *Environmental law and Sustainable. Development,* Regal Publications, New Delhi, ed. 2010.

[3] See document of Rio Declaration, Principle 10.

discriminatory and lustful use of natural resources would ultimately lead humanity to an ultimate disaster.

The Supreme Court in its judgments has established that the State has affirmative duties with regard to public trust of natural resources, which ought to be used for public purpose. On the other hand, it also provides for a high degree of judicial scrutiny on any action of the government which is a restriction of free use of common property. But the Court while making proper scrutiny should make a distinction between the government's general obligations to act for the public benefit and the special and more demanding obligations, as a trustee of the natural resources. The Supreme Court has said that, the State has an onerous responsibility to safeguard the representative samples of nature. And at the same time, it should not be oblivious of the basic needs of society, e.g. Right to potable water and shelter.

II. Judiciary and the Interpretation of 'Right To Life' to Include 'Right To Pollution Free Environment':

The Supreme Court of India has broadened the concept of life, extended the scope of personal liberty so as to include within itself all the varieties of rights which help a man to live his life with dignity. Thus Article 21 has been interpreted by Supreme Court to include right to pollution free environment. Right to pollution free environment has been raised to the level of separate fundamental right by Indian Judiciary. The Supreme Court of India has undertaken to explicate the development of ideology of environment as being part of the right to life by various judicial pronouncements.

In Subhash Kumar v State of Bihar[4], it was observed by the Supreme Court that right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution free water and air for full enhoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution. Through this judgment the Supreme Court recognized the right to a wholesome environment as part of the fundamental right to life.

In fact in the year 1985 in Rural Litigation and Entitlement Kendra v State of Uttar Pradesh[5] the Supreme Court for the first time though not directly recognized the right to live in a clean environment as a part of right to life under Article 21 of the Constitution. In this case the Supreme Court ordered the closure of certain limestone quarries on the ground that there

[4] AIR 1991 SC 420.
[5] (1985) 2 SCC 431

were serious deficiencies regarding safety and hazards in them. The Court had appointed a committee for the purples of inspecting certain limestone quarries. The committee had suggested the closure of certain categories of stone quarries having regard to adverse impact of mining operations therein. A large scale pollution was caused by lime stone quarries adversely affecting the safety and health of the people living in the area.

In M. C. Mehta v Union of India[6] popularly known as Shriram Food and Fertilizer Case, the Supreme Court directed the Company manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighbourhood, to take all necessary safety measures before reopening the plant. Thus in this case also the Supreme Court recognized right to live in a healthy environment as part of right to life.

In the instant case, there was leakage of chlorine gas from the plant resulting in death of one person and causing hardships to workers and residents of the locality. This was due to the negligence of the management in maintenance and operation of the caustic chlorine plant of the company. The matter was brought before the Court through a public interest litigation. The management was directed to deposit a sum of Rs 20 lacs by way of security for payment of compensation claims of the victims of Oleum gas leak with the Registrar of the Court. In addition, a bank guarantee for a sum of Rs 15 lacs was also directed to be deposited which would be encashed in case of any escape of chlorine gas within a period of three years from the date of the judgment resulting in death or injury to any workman or any person living in the vicinity. Subject to these conditions the court allowed the partial reopening of the plant.

In M.C Mehta Mehta V Union of India[7], the Supreme Court ordered the closure of tanneries at Jajmau near Kanpur, polluting river Ganga. The matter was brought to the notice of the Court by the petitioner, a social worker, through a Public Interest Litigation.

The Supreme Court said that notwithstanding the comprehensive provisions contained in the Water (Prevention and Control of Pollution) Act and Environmental (protection) Act, 1986, no effective steps have been taken by the Government to stop the grave public nuisance caused by the tanneries at Jajmau, Kanpur. In the circumstances, it was held that the Court was entitled to order the closure of tanneries unless they took steps to set up treatment plants.

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[6] (1986) 2 SCC 176
[7] (1987) 4 SCC 463.

In Sachidanand Pandey v State of West Bengal[8] the appellants through a public interest litigation challenged the Government of West Bengal's decision to allot a land for the construction of a Five Star Hotel in the vicinity of the Zoological Garden of Kolkata. It was argued that multi-storied building in the vicinity of the Zoo would disturb the animals and the ecological balance and would affect the bird migration which was a great attraction. The decision was thus taken without considering its impact on the zoo.

The Supreme Court held that although in view of the Articles 48-A and 51-A (g) of the Indian Constitution, when ever a problem of ecology is brought before the Court it would not refuse to interfere only on the ground that priorities are matter of policy and so it is a matter for the policy making authority. At least the court may examine whether appropriate considerations are borne in mind and irrelevancies excluded. The court has always the power to give necessary directions. In the present case, however it was held that the interference of the Court was not called for. It was held that the decision to allot the land for the construction of Hotel was taken openly by the Government after taking into consideration all facts and considerations including ecology. Its action was neither against the interest of the Zoo nor against the financial interest of the state. The government has acted bona fide in allotting the land to the Taj Group of Hotels for the construction of a Five Stare Hotel at the vicinity of the zoo.

In 1995 in the case of Virendra Gaur v State of Haryana (1995 (4) SCC 57) the Supreme Court once again asserted that right to life under Article 21 includes right to have pure and pollution free water and air. It said—

> *"Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including their right to live with human dignity encompasses within its ambit the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation, without which life cannot be enjoyed. Environmental, ecological, air, and water pollution should be regarded as amounting to violation of Article 21. Therefore hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment".*

Subsequently in several other cases like Chameli Singh v State of UP (AIR 1996 1051), Dr B. L. Wadhera v Union of India (AIR 1996SC 2969), and Vellore Citizens Welfare Forum v Union of India and Others

[8] (1987) 2 SCC 295.

(1996 SCC 659) the Supreme Court asserted in clear and unambiguous words that right to clean and healthy environment is a fundamental right.

III. Sustainable Development:

The most remarkable contribution of the Supreme Court has been adoption of sustainable development as a hardcore principle of environment law in India[9] The consistent position adopted by the Supreme Court as enunciated in one of its judgments[10] has been that there can neither be development at the cost of the environment or environment at the cost of development. A general outline is given to understand the importance of the sustainable development and how it forms the part of International law. The Supreme Court had the magnanimous talk of balancing between the development and environment. A glaring epitome of this is the stand of Supreme Court in dealing with the infrastructural projects and the related policy issues.

The concept of sustainable development was first time discussed at the international level in the 1972 in the Stockholm Declaration. But the concept was given a definite shape and clarity in a report by world commission on environment, which was known as 'our common future'. Sustainable development is defined as 'development that meets the needs of the present without compromising the ability of the future generation to meet their own needs[11]. The concept had been further discussed under agenda 21 of UN conference on environment and development. The world Conservation Union, in its strategies for National Sustainable Development, defines sustainable development as follows:

> *"Sustainable development means improving and maintaining the well being of the people and ecosystems".*

This goal is far from being achieved. It entails integrating economic, social and environmental objectives and making choices among them where integration is not possible. People need to improve their relationships with each other and with the ecosystems that support them by changing or strengthening their values, technologies and institutions.[12]

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[9] Dr. G. Indira Priya Darini & Prof K. Uma Devi, *Environmental law and sustainable development*, Regal Publications, New Delhi, ed 2010.

[10] *Goa Foundation, Goa v. Diksha Holdings Pvt Ltd,* AIR 2001 SC 184

[11] Jeremy Carew- Reid, Robert Prescott- Alen, Stephen Bass, Barry Dalal-Clayton, "*Strategies for Sustainable Development: A Handbook for their Implementation"*, Earthscan (1994).

[12] Ashish Kothari, *Sustainable Development*", The Hindu Survey of the Environment, 2002, p. 27

Once India's model of development was focusing heavily on certain material goods and services and the development was profoundly unsustainable. Natural resources were pumped back into eco-systems at the rates higher than they could be absorbed or cleaned up. There were glaring inequities in distribution of natural and cultural resources. But the first decade of twenty first century took the road to sustainability and justice[13]. There was a quiet revolution in re-greening of lands by rural communities, van panchayats. Water harvesting practice and bio-agriculture were encouraging signs. To block destructive projects, the popular attempts of those of the 'Narmada Bachao Andolan' have brought issues of sustainable and equitable development into national agenda[14]. Indian Judiciary has played an important role in interpreting the laws in such a manner which help in protecting environment and also in promoting sustainable development.

Some of the basic principles of Sustainable development as described in Brundtland report that are applied by judiciary are Inter-Generational equity, Intra–Generational Equity, The Precautionary Principle, and Polluter Pays Principle. The judiciary has applied these principles whenever they find cases on environmental crisis caused by indiscriminate activities like quarrying, mining, stone crushing, tree felling, industrialization, urbanization, ecological unstability.

IV. Inter-Generational Equity Principle:

The central theme of the principle of inter-generational equity is the right of each generation of human beings to benefit from the cultural and natural inheritance of the past generations as well as the obligation to preserve such heritage for future generation. The principle casts duty on present generation to be a trustee for unborn generations. The principle talks about the right of every generation to get benefit from the natural resources.

Principle 3 of the Rio Declaration states that, "the right to development must be fulfilled so as to equitably meet development and environmental needs of present and future generations". The main object behind the principle is to ensure that the present generation should not abuse the non-renewable resources so as to deprive the future generation of its benefit. This principle requires conserving the diversity and quality of biological resources and of renewable resources such as forests, water and soils. This principle was used in the cases of and has also been recognized by

[13] Dr G. Indira Priya Darini & Prof K. Uma Devi, *Environmental law and Sustainable Development*, Regal Publications, New Delhi, ed. 2010

[14] Armin Rosencranz, Shyam Divan and Mathal I. Noble, "*Environmental Law and Policy in India*" 60 (1991)

the Supreme Court of India in the Taj Trapezium case[15]. In State of Himachal Pradesh v Ganesh Wood products[16], the Supreme Court invalidated forest-based industry, recognizing the principle of inter-generational equity as being central to the conservation of forest resources and sustainable development.

The Supreme Court also noted in the CRZ Notification case[17] that the principle would be violated if there were a substantial adverse ecological effect caused by industry. In forbidding limestone mining operations in the Himalayan foothills, the Supreme Court of India took into account the interests of future generations in the unique legacy of the Himalayan ecosystem.

Similarly the need to defend and improve the human environment for present and future generations was considered by the court in ordering the closure of several tanneries despite the unemployment resulting from such an order. The satisfaction of human needs and aspirations is the major objective of development. Meeting the essential needs depends in part on achieving full growth potential and sustainable development clearly requires economic growth in places where such needs are not being met.

V. Precautionary Principle:

This principle is enshrined in the concept of sustainable development. This principle has widely been recognized as the most important principle of sustainable development and tool for environmental protection. Principle 15 of the Rio Declaration states that, "in order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation"

The precautionary approach is said to promote development of clean technology. In M. C. Mehta v Union of India[18], the court followed the path of sustainable development and applied the precautionary principle by holding that the environmental measures by the state government and the local authorities must anticipate, prevent and attack the caused of environmental degradation. Thus all the industries operating in the Taz Trapezium zone must use natural gas as substitute for coal, as an industrial fuel. The industries which are not in position to obtain the natural gas

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15 AIR 1997 SC 734
16 AIR 1996 SC 149
17 *Indian Council for enviro-legal Action v Union of India* (1996) 5 SCC 281
18 AIR 1997 SC 734.

connections for any reason, they must stop functioning and they may relocate themselves as per directions of the court.

In Vellore Citizens Welfare Forum v Union of India and Others[19] the petitioner, Vellore Citizen's Welfare Forum filed a writ petition by way of public interest litigation drawing the attention of the Court towards the pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It was said that the tanneries are discharging untreated effluent into agricultural fields. Water ways, open land and rivers rendering the river water unfit for human consumption, contaminating the subsoil water and had spoiled the physico-chemical properties of the soil making it unfit for agricultural purposes.

The Supreme Court held that such industries though are of vital importance to the country's development but they cannot be allowed to destroy the ecology, degrade the environment and pose a health hazard and cannot be permitted to continue their operation unless they set up pollution control devices.

Justice Kuldip Singh , who delivered the judgment on behalf of the Court held that while such industries are of vital importance for the country's progress as they generate foreign exchange and provide employment avenues, but having regard to pollution caused by them, principle of 'sustainable development' has to be adopted as a balancing concept between ecology and development.

His Lordship held that the 'precautionary principle' and 'polluter pays' principle are essential feature of 'sustainable development' and has to be adopted. Remediation of the damaged environment is part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. The Court directed the closure of these tanneries unless they install pollution control devices. The Court also imposed a fine of Rs 10,000 on each industry. The Court further suggested for constituting a special bench called 'Green bench' of the Madras High court to deal with these and other environmental cases as they are in better position to monitor these matters.

In Andhra Pradesh Pollution Control Board case[20] the court relied on the Vellore case[21] before pondering over the various dimensions of the precautionary principle. It was held that the principle of precaution involves anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting

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19 (1996) 5 SCC 650.
20 AIR 1999 SC 812, p. 820.
21 AIR 1996 SC 2715.

health, property and economic interest, but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by concern or risk potential. The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm including, for example extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.

Precautionary approach is a principle meant to avert environmental disaster. The Supreme Court was of the view that it is better to err on the side of caution and prevent environmental harm than to run the risk of irreversible harm. In the year 1982 the pendulum swung towards precautionary principle when United Nations laid down that the activities should not be permitted to proceed when their adverse effects are not fully understood. The Rio conference in 1992 has recognized the precautionary approach as a norm for various nations to pursue. It s acceptance in the international scenario in the past, the precautionary principle is said to be a principle 'born before it was conceived'. Indian courts started tending the principle with great care and enthusiasm as soon as it was born. As early as in 1993, reclamation of wet lands for building a trade centre was prevented as the benefits of wetlands to the society could not be weighed on mathematical nicety. Extensive, semi-extensive and intensive aquaculture was ordered to be dismantled to prevent possible disaster on coastal eco-system. Closure of tanneries in certain districts of Tamil Nadu was directed with view to prevent serious damage to ground water.

As elucidated in the case of Vellore Citizens Welfare Forum v Union of India and Others[22] precautionary principle includes:

V. I. The environmental measures by the state government and the local authority must anticipate, prevent and attack the causes of environmental degradation.

V. II. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

V. III. The onus of proof is on the actor or the developer to proof that his action is environmentally benign[23].

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[22] (1996) 5 SCC 659, 212, 268

[23] Carolyn Shelbourn, *Historic Pollution- Does the polluter pay'*, Journal of planning and environmental law, 1974.

The risk of harm to the environment or to the human health is to be decided in public interest according to 'reasonable persons test' There are many factories, plants and utilities which though exist in public interest, are vulnerable to certain risks. Should they be decommissioned or dismantled or relocated because of risks involved. In Fertilizers and Chemicals Travancore Ltd Employees Association v Law Society of India others[24,] the Apex Court of India answered this question in the negative, holding that keeping in view the necessities of modern times, we have live with such risks, which are counterbalanced by services and amenities provided by these utilities. If the arguments of the original petitioner are accepted then no such utility can exist, no power plant can exist, no reservoir, can exist, no nuclear reactor can exist, the court added. In the instant case the appellant, a fertilizer company had a liquid ammonia storage tank. The original petitioner had contended that in the event of earthquake or terrorist attack or sabotage or an air crash into the tank from the nearby airport, there would be human tragedy caused on account of leakage of ammonia from the storage tank and therefore the said tank should be relocated.

VI. Polluter Pays Principle:

According to this principle the polluting industry has to take the liability of providing compensation for the damage caused by its activity. For ensuring sustainable development the implementation of precautionary principle and the Polluter pays principle are necessary. In Vellore Citizens Welfare Forum v Union of India and Others ([1996] 5 SCC 959) the Supreme Court discussed the scope of sustainable development by highlighting the Polluter pays principle and the precautionary principle.

In Vellore Citizens Welfare Forum v Union of India and Others ([1996] 5 SCC 959) the petitioner, Vellore Citizen's Welfare Forum filed a writ petition by way of public interest litigation drawing the attention of the Court towards the pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It was said that the tanneries are discharging untreated effluent into agricultural fields. Water ways, open land and rivers rendering the river water unfit for human consumption, contaminating the subsoil water and had spoiled the physico-chemical properties of the soil making it unfit for agricultural purposes.

The Supreme Court held that such industries though are of vital importance to the country's development but they cannot be allowed to destroy the ecology, degrade the environment and pose a health hazard and

[24] AIR 1994 Kerala 308, 370 206, 211

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VII. Doctrine of Public Trust:

The public trust doctrine principle rests on the principle that certain resources like air, sea, water and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The natural resources being the gift of nature, they should be freely made available to everyone irrespective of the status in life. The doctrine enjoins upon the government to protect the resources from private ownership or commercial purposes for the enjoyment of the general public.

According to Joseph L. Sax, the proponent of public trust doctrine, traditional public trust laws had only a narrow scope. But now the doctrine is not limited to conventional interests or questions of disposition of public properties. He observed that public trust questions are found whenever governmental regulation comes into question and they occur in a wide range of situations in which diffused interests need protection against tightly organized groups with clear and immediate goals. The doctrine of public trust calls for affirmative state action for effective management of natural resources.

The public trust doctrine was applied in the Span Motel case[25]. Span Motels built a resort on bank of Beas River in Himachal Pradesh. Span Motels carried out substantial work of dredging, construction of concrete barriers, wires crates etc to deflect the flow of the river. The court quashing the lease granted to the motel held that "the state is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the natural resources. The state as a trustee is under a legal duty to protect the natural resources. These resources are meant for public use and cannot be converted into private ownership". The court ordered the motel to pay compensation by way of restitution of the environment and ecology of the area.

[25] AIR 1999 SC 2468

Chief Justice Y.K. Sabharwal points out that when the Supreme Court has applied the public trust doctrine it has considered it not only as an international law concept but also as one which is well established in our domestic legal system. In M.C. Mehta v Kamal Nath[26], the Court held that the State, as a trustee of all natural resources, was under a legal duty to protect them, and that the resources were meant for public use and could not be transferred to private ownership.

In the case of M.I. Builders Pvt. Ltd. v Radhey Shyam Sahu[27,] it was rightly observed by the Supreme Court that, "the risk of ecological disaster is one of the most pronounced risks of today's society, and it is this disaster, which is sought to be counteracted and neutralized by developing the notion of public trust". It was observed by the Supreme Court that the public trust doctrine had developed from Article 21 of the Constitution and is very much part of the Indian legal jurisprudence.

The doctrine of public trust was propounded by Professor Sax and redefined by the Supreme court of India in M.C. Mehta v Kamal Nath and Others[28], has also been reiterated in Niyamavedi v Union of India[29]. In this case the applicant sought to grab evergreen forest belonging to state and its people and governed by the Forest (Conservation) Act, 1980 by practicing fraud and misrepresentation of the facts before the Forest Tribunal and forest authorities. The Kerala High Court confirmed the order of the Tribunal. A review petition filed before the Tribunal under section 8B was rejected holding that the said petition was not maintainable since the order reviewed was concluded by the judgment of the High Court. A division Bench of the High Court also rejected review petition. Special Leave petition preferred before the Supreme Court in 1994 was also dismissed. But the applicant had filed a writ petition before the High Court for issuing mandamus directing restoration of the property and writ petition was allowed. The State as the custodian filed a petition for review of judgment.

In the guise of implementing the judgment in the original application twenty acres of ever green thick forest was symbolically delivered to the applicant by the state to wiggle out to the contempt court proceedings initiated by the applicant. An organization named 'Niyamvedi' filed a writ petition challenging the said transfer. The order passed by the Division Bench of the High /court was sought to be reviewed by the State. The issue raised in the petition filed by 'Niyamavedi' is thus a classic struggle between members of the public who would like to preserve forest and those charged with administrative responsibilities and the property grabbers. This also

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[26] 1996, 9 SCALE 141.
[27] AIR 1999 SC 2468, 209, 278
[28] 1996, 9 SCALE 141
[29] AIR 2004 Kerala 81

shows how property grabbers, tax evaders, and other unscrupulous person from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. It is gratifying to note however, a division Bench of the Kerala High Court unearthed not only the fraud and misrepresentation perpetrated by the applicant but also saved twenty acres evergreen forest with thick trees of more than 300 years from the forest grabber by condoning the delay suo moto. The Court found that the land the applicant claimed on the strength of a document and the land sought to be restored were distinct and different lands. What were handed over to the applicant through contempt of court proceedings were evergreen forest for complying with the order of High Court or to get over contempt proceedings.

Due to painstaking effort of the Division Bench of the High Court truth ultimately prevailed and valuable natural resources, which are necessary for the purpose of protecting the eco-system were restored to the people.

In S. Jagannath v Union of India[30], the petitioner, Chairman Gram Swaraj Movement, a voluntary organization, filed a petition under Article 32 by way of public interest litigation seeking the enforcement of Coastal Zone Regulation Notification of the Government of India, stopping of intensive and semi intensive type of prawn farming in the ecological fragile coastal areas, prohibition from using the waste land, wet lands for prawn farming and the constitution of a National Coastal Management Authority to safeguard the marine life and coastal areas. It was contended that a large number of private and multinational companies have started setting up Shrimp farm in the coastal areas of the country causing serious threat to the environment and ecology of these areas.

The Supreme Court held that setting up of shrimp culture farms within the prohibited area sand in ecology fragile coastal areas have adverse effect on environment and coastal ecology and economics and therefore they cannot be permitted to operate. Shrimp culture industry is neither directly related to water front not directly needing foreshore facilities and cannot be allowed to set up any where in the Coastal Regulation zone.

Justice Kuldip Singh, who delivered the judgment of the court said:

> *"The sea coast and beaches are gifts of the nature to the mankind. The aesthetic qualities and recreational utility of the said area has to be maintained. Any activity which has the effect of degrading the environment cannot be permitted. Apart from that the right of the fishermen and farmers living in the coastal areas to eke out their living by way of fishing and farming cannot be denied to them".*

[30] AIR 1997 SC 811

The Court further said that traditional type of shrimp farming are environmentally benign and pollution free. But the modern technological type of farming using chemical to create more produce create pollution and degrading effect on the environment and ecology and therefore, such type of shrimp farming cannot be permitted.

The Supreme Court issued comprehensive direction for the regulation and control of shrimp industries in the coastal areas. It directed the Central government to constitute a high power authority for granting permission for installation of shrimp industry. The authority so constituted by the Central government shall implement the 'Polluter pays" principle and 'the precautionary principle". The Court held that the employees of the industries directed to be closed are entitled to retrenchment compensation and six years wages as additional compensation.

In a significant judgment in Indian council for Enviro-legal Action v Union of India[31] the Supreme Court has held that if by the action of private corporate bodies a person's fundamental right is violated the Court would not accept the argument that it is not 'State' within the meaning of article 12 of the Indian constitution and, therefore action cannot be taken against it. If the court finds that the Government or authorities concerned have not taken the action required of them by law and this has resulted in violation of the right to life of the citizens, it will be the duty of the Court to intervene.

In this case an environmentalist organization filed a writ petition under Article 32 before the Court complaining the plight of people living in the vicinity of chemical industrial plants in India and requesting for appropriate remedial measures. The fact was that in a village Bichari in Udaipur district of Rajasthan an industrial complex had developed and respondents have established their chemical industries therein. Some of the industries were producing chemicals like Oleum and Single Phosphate.

The respondent had not obtained the requisite license and nor did they install any equipment for treatment of highly toxic effluents discharged by them. As a result of this the water in the wells became unfit for human consumption. It spread diseases, death and disaster in the village and surrounding areas. The villagers revolted against all this resulting in stoppage of manufacturing of Hydrochloric acid and ultimately these industries were closed. But the consequences of their action remained in existence causing damage to the village.

The Court requested the National Environmental Engineering Research Institute to study the situation and to submit their report. In the technical report it was found that out of 2440 tonnes of sludge, about 720 tonnes was still there. With a view to conceal it from the eyes of the

[31] (1996) 3 SCC 212

inspection teams the respondents had dispersed it all over the area and covered it with earth. Inspite of the Court's order they did not remove the sludge. The Supreme court held that the writ was maintainable and directed the Government and the authorities concerned to perform their statutory duties under various Acts.

The Court held that respondents were responsible for all the damages to the soil, to the underground water and to the village in general. Regarding the determination of cost of remedial measures the Court held the Central Government had power to decide it. The principle on which the liability of the respondents to defray the costs of remedial measures will be determined is the "Polluter Pays" principle. The "Polluter Pays" principle says that the responsibility for repairing damages is that of the offending industry.

In yet another case of M.C. Mehta v. Union of India[32], the petitioner M.C. Mehta filed a Public Interest Litigation in the Court drawing attention of the Court towards the degradation of the Taj Mahal due to the atmospheric pollution caused by a number of foundries, chemically hazardous industries established and functioning around the Taj Mahal and requested the Court to issue appropriate directions to the authorities concerned to take immediate steps to stop air pollution in the Taj Trapezium.

Justice Kuldip Singh, who is known as a green judge for his decisions on pollution, delivering the judgment of the Court held that the 292 polluting industries locally operating in the area are the main source of pollution and directed them to change over within fixed time schedule to natural gas as industrial fuel and if they could not do so they must stop functioning beyond 31st December 1997 and be reallocated alternatives plots in the industrial estate outside Taj Trapezium.

The Supreme Court took care of rights and benefits of the workers employed in these industries and issued necessary directions. They shall be entitled to following rights and benefits—

VII. I. The workers have continuity of employment in the relocated industries with the same terms and conditions.

VII. II. The period between the closure and its restart shall be treated as active employment and shall be paid to their full wages.

VII. III. The workmen who agree to shift with the industry shall be given one year's wages as shifting bonus to help them settle at the new location. The said bonus shall be paid before January 31st 1998.

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[32] AIR 1997 SC 735

VII. IV. The workmen who opt for closure shall be deemed to have been retrenched by May 31 1997 and shall be paid compensation in terms of section 25 F (b) of Industrial Dispute Act. These workmen shall also be paid in addition six years wages as additional compensation.

VII. V. The compensation payable to the workmen in terms of this judgment shall be paid by the management within two months of the retrenchment.

VII. VI. The gratuity amount payable to any workmen shall be paid in addition.

Environmental protection in general and conservation of biodiversity in particular, envisages conflict between socio-economic interest of people impinging on their right to wholesome environment and ecological balance, on one hand, and rights of livelihood of tribals or local inhabitants, on the other. Conservation signifies sustainable use, that is, controlled, restricted or regulated use of natural resources. This, however, perforce affects the livelihood patterns of local people, whose survival depends on various uses of forest produce and wildlife. In order to keep them in harmony with natural environment and to also meet their survival needs, the courts have given recognition to their right to livelihood.

The process of balancing the aforementioned conflicting interests has generated two different responses. Whereas in the Doon Valley case[33], the Supreme Court though acknowledging the hardship of people engaged in limestone quarrying business and being uprooted accorded precedence to the environment and ecological balance, in Animal and Environment Legal Defence Fund case[34], the Supreme Court observed—

> *"While every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood".*

In Banawasi Seva Ashram v State of Uttar Pradesh[35], the Supreme Court prescribed detailed safeguards to protect tribal forest dwellers who were being ousted from their forest land by the National Thermal Power Corporation Limited for the Rihand Super Thermal Power Project. The court permitted the acquisition of the land only after the NTPC agreed to provide certain court-approved facilities to the ousted forest dwellers. During the

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33 (1985) 2 SCC 431
34 (1997) 3 SCC 549,141
35 AIR 1987 SC 374

course of its order the Court accepted the traditional rights of tribals who "for generations had been using the jungles around for collecting the requirements for their livelihood- fruits, vegetables, fodder, flowers, timber, animals by way of sport and fuelwood".

VIII. Closure of Illegal and Unauthorised Slaughter Houses:

In M.C. Mehta v Union of India[36] the Supreme Court directed closure of slaughter houses located at Kuberpur, Agra. The Rajasthan High Court in Residents of Sanjay Nagar and others v State of Rajasthan and others[37] relying on the principles laid down in M.C. Mehta case ordered the immediate closure of the unauthorized and illegal slaughter housed and illegal skin stores and said that the dislocated persons could move the concerned authorities for the allotment of land in the area which may have been earmarked for setting up of the slaughter housed. Thus the court came to the rescue of affected citizens and prevented the pollution caused by slaughtering of animals and strong smell emanating from the area when all the authorities namely the State of Rajasthan, Municipal Council Board and Superintendent of Police despite their confirmed views that the slaughter houses should be closed, feigned their helplessness in the matter

IX. Formulation of Absolute Liability Principle by Supreme Court:

Another area where the Supreme Court of Indian has played a very important role is in formulating the principle of Absolute Liability. Before the case of M.C. Mehta v Union of India[38], the English doctrine of strict liability was in vogue and was being followed and applied by the Indian courts. The doctrine of strict liability provided that the defendant could be made liable even if he was not negligent in his duty if certain conditions were satisfied. The conditions to be satisfied for the application of the doctrine of strict liability were as follows—

IX. I. The defendant must have brought on his land some hazardous or dangerous substance.

IX. II. The dangerous substance should have escaped fro the land of the defendant to the land of the plaintiff, and

IX. III. It must cause damage to the plaintiff.

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[36] (2002) 9 SCC 74
[37] AIR 2004 Rajasthan 116
[38] AIR 1987 SC 965

However there were some exceptions to this rule, that is, there were certain defences available to the defendant to escape from the liability or avoid the liability. For example if the defendant could prove that the resultant harm was caused due to the act of God or due to act of the third party or the dangerous substance was brought on the land of the defendant with the consent of the plaintiff, then the defendant could be exempted from liability.

But in M.C Mehta v Union of India[39], the Supreme Court refused to apply the doctrine of strict liability and instead formulated and applied the doctrine of absolute liability. The doctrine of absolute liability does not provide for any defences or escape routes to the defendant. Under this doctrine the liability of the defendant is absolute.

In the above case, Justice Bhagwati held that strict liability rule evolved in the 19th century was no longer applicable since law has to grow in order to satisfy the need of the fast changing society and keep abreast of the economic developments taking place in the country. He said-

> *"we no longer need the crutches of a foreign legal order… we in India, cannot hold back our hands and I venture to evolve new principles of liability which English courts have not done"*

The doctrine of absolute liability provides that, where an enterprise is engaged in hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity, the enterprise is absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions or defences available under the doctrine of strict liability.

X. Reasons Given by Supreme Court to Justify the Rule of Absolute Liability:

The Supreme Court cited the following reasons to justify the rule of absolute liability-

X. I. The enterprise carrying on such hazardous and inherently dangerous activity for private profit has social obligation to compensate those suffering therefrom.

X. II. The enterprise alone has the resources to discover and guard such hazards and dangers.

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[39] ibid

X. III. If the enterprise is permitted to carry on any hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising out of such hazardous activity.

X. IV. Such hazardous and inherently dangerous activity can be tolerated only on the condition that the enterprise engaged in such hazardous and inherently dangerous activity indemnifies all those who suffer on account of carrying on such hazardous activity regardless of whether it was carried carefully or not.

XI. Prohibition of Smoking:

In Murli S. Deora v Union of India[40], the Supreme Court highlighted the harmful effects of smoking not only on the smokers but also on passive smokers. Referring to the statement of objects and reasons of the Cigarettes (Regulation of Production, Supply and Distribution) Act 1975, the Court observed that treatment of tobacco related diseases and the loss of productivity caused therein cost the country almost Rs 13,500/- crores annually. This amount more than offsets all the benefits accruing in the form of revenue and employment generated by tobacco industry.

XII. Conclusion:

The factor that contributes to the evolution of social jurisprudence is that Indian Constitution aims at a Welfare State. In a welfare state judiciary cannot solve problems if it adopts the traditional rules of interpretations. Nor can judges who play the role of disinterested umpires solve them. Hence judges have to become 'activist judges'. It is evident that the Indian judiciary has been very sensitive and alive to the protection of the rights of the people. It has, through judicial activism forged new tools and devised new remedies and with public interest litigation, the Supreme Court has refashioned its institutional role to readily enforce rights of the people and even impose positive obligations on the State. The contribution of the Supreme Court of India in protecting the environment and ecology, forest, wild life, etc. has been phenomenal. Despite the limitations of jurisdiction, the court played a vital role in this regard. More importantly what is needed from an environmental angle is a vision for the future. We have got enough laws to protect the environment, but its implementation is in the hands of

[40] AIR 2002 SC 40

administrative authorities. Good governance free from corruption is the basic need to protect environment[41].

Modern environmental regime is the result of a broad and universalistic scientific conception of nature as an ecosystem with which human society must come into harmony. It rejects earlier and narrower conceptions of the environment as the locus of either sentiment or particular resources. In this understanding of nature and its value-intrinsic, instrumental and inherent, environmental protection emerges as a critical component of the concept of sustainable development and the aim of the environmental law is to ensure development on a sustainable basis. The Supreme Court and the High Courts are alive to the current thinking on the subject and have by and large dealt with the enviro-development issues in a very sensible, sound and pragmatic manner. It should also be kept in mind that environment management is predominately a behavioral management in which the role of law and judicial decisions is significant but limited.

The contribution of the Supreme Court of India in protecting the environment and ecology, forest, wild life etc has been phenomenal. Despite the limitations of jurisdiction, the Supreme Court has played a vital role in this regard. The concepts of sustainable development are fully appreciated and applied by Indian judiciary, while adjudicating environmental issues.

[41] Dr G. Indira Priya Darini & Prof K. Uma Devi, *Environmental law and Sustainable Development,* Regal Publications, New Delhi, ed. 2010.